

ORRY P. KORB, County Counsel (S.B. #114399)  
 MELISSA R. KINIYALOGTS, Deputy County Counsel (S.B. #215814)  
 OFFICE OF THE COUNTY COUNSEL  
 70 West Hedding Street, East Wing, Ninth Floor  
 San Jose, California 95110-1770  
 Telephone: (408) 299-5900

Attorneys for Defendant  
 COUNTY OF SANTA CLARA

DAVID J. STOCK, ESQ. (S.B. #85655)  
 RANKIN, STOCK & HEABERLIN  
 96 N. Third Street, Suite 500  
 San Jose, California 95112  
 Telephone: (408) 293-0463

Attorneys for Defendant  
 OFFICER PHILLIP ABECENDARIO

DAVID S. ROSENBAUM, ESQ. (S.B. #151506)  
 McDOWALL COTTER  
 2070 Pioneer Court  
 San Mateo, California 94403  
 Telephone: (650) 572-0834

Attorneys for Defendant  
 OFFICER TUAN LE

ROBERT R. POWELL, ESQ. (S.B. #159747)  
 SARAH E. MARINHO, ESQ. (SB #293690)  
 LAW OFFICE OF ROBERT R. POWELL  
 925 West Hedding Street  
 San Jose, California 95126  
 Telephone: (408) 553-0200

Attorneys for Plaintiff  
 RUBEN GARCIA

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

RUBEN GARCIA,  
 Plaintiff,

v.

COUNTY OF SANTA CLARA et al.,  
 Defendants.

No. 16-CV-00012-RMW

**JOINT CASE MANAGEMENT  
 STATEMENT AND ~~PROPOSED~~ ORDER**

Date: April 29, 2016  
 Time: 10:30 a.m.  
 Crtrm.: 6, 4<sup>th</sup> Floor  
 Judge: Ronald M. Whyte

1 The parties to the above-entitled action submit this Joint Case Management Statement and  
2 Proposed Order pursuant to the Standing Order for All Judges of the Northern District of California  
3 and Civil Local Rule 16-9.

4 1. Jurisdiction and Service

5 This action arises under 42 U.S.C. § 1983. Jurisdiction is conferred pursuant to 28 U.S.C. §§  
6 1331 and 1343. The County of Santa Clara has been served and filed an Answer. Defendants  
7 Phillip Abecendario and Tuan Le have filed waivers of service of summons, and their deadline to  
8 respond to the Complaint is May 2, 2016.

9 2. Plaintiff's Allegations and Pending Criminal Investigation

10 Plaintiff Ruben Garcia alleges that while he was an inmate at the County's Main Jail,  
11 Defendants Abecendario and Le, who are correctional officers, violated his constitutional rights by  
12 allegedly using excessive force and denying him medical care in July 2015. Plaintiff alleges that the  
13 County was on notice of a pattern of unconstitutional conduct by correctional officers and  
14 demonstrated deliberate indifference to this alleged pattern and also allegedly failed to provide  
15 adequate training to correctional officers. Defendants deny Plaintiffs' allegations.

16 The parties believe that the Office of the District Attorney has an open criminal investigation  
17 pertaining to the incidents alleged in the Complaint but has not brought charges.

18 3. Legal Issues

19 Plaintiff brings claims pursuant to 42 U.S.C. § 1983 for alleged violations of the Fourth,  
20 Fifth, Eighth, and Fourteenth Amendments against the correctional-officer defendants and a *Monell*  
21 claim against the County. Plaintiff also brings state-law claims for intentional infliction of  
22 emotional distress, alleged violations of California Civil Code section 52.1, and breach of mandatory  
23 duty.

24 4. Motions

25 There are no pending motions. Given the early posture of the case, the parties are unable to  
26 identify anticipated motions at this time.

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1           5.     Amendment of Pleadings

2           Plaintiffs anticipate amending the complaint to correctly spell the full and complete name of  
3 Mr. Phillip Abecendario, and include the first name of correctional officer Le.

4           6.     Evidence Preservation

5           The parties have reviewed the Guidelines for the Discovery of Electronically Stored  
6 Information (ESI), which were revised on December 1, 2015. The parties are aware of their  
7 obligations to cooperate on issues relating to the preservation, collection, search, review, and  
8 production of ESI and that the proportionality standard set forth in Federal Rule of Civil Procedure  
9 26(b)(1) applies to discovery in this case. The parties agree to meet and confer as necessary to  
10 address any issues regarding ESI.

11          7.     Disclosures

12          The parties agree to serve their initial disclosures pursuant to Federal Rule of Civil Procedure  
13 26 by May 27, 2016.

14          8.     Discovery

15          Discovery has not yet begun. The parties agree that discovery may be impacted by the  
16 pending criminal investigation pertaining to the incidents alleged in the Complaint. It is premature  
17 at this time to set a discovery schedule given the uncertainty of the timing and outcome of the  
18 criminal investigation.

19          9.     Class Action

20          This case is not a class action.

21          10.    Related Cases

22          There are no related cases.

23          11.    Relief

24          Plaintiff will be seeking emotional distress damages, compensation for pain and suffering,  
25 past and future medical expenses associated with injuries sustained to his jaw/teeth with anticipated  
26 future surgeries, and punitive damages in an amount to be determined at trial according to proof.

27          12.    Settlement and ADR

28          The parties have agreed to mediation and that the case will not be in a posture to effectively

mediate the case until after the pending criminal matter is complete.

13. Consent to Magistrate Judge for All Purposes

The County has not consented to proceed before a Magistrate Judge.

14. Other References

The parties agree that this case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

At this time the parties are not aware of any issues that can be narrowed by agreement or motion.

16. Expedited Trial Procedure

The parties agree that this case is not suitable for the Expedited Trial Procedure of General Order No. 64.

17. Scheduling

Given the pending criminal investigation and the uncertainty at this time of the timing and outcome of that matter, the parties agree that it is premature to schedule dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference, and trial.

18. Trial

This case will be tried to a jury, and the estimated length of trial at this time is two weeks.

19. Disclosure of Non-party Interested Entities or Persons

The County is exempt from filing a Certification of Interested Entities or Persons.

20. Professional Conduct

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other

Given the pending criminal investigation and the parties' inability at this time to set a discovery schedule and trial date, the parties respectfully request that the Court continue the Case Management Conference for 60 days.

//

1 I hereby attest that I have on file all holographic signatures corresponding to any signatures  
2 indicated by a conformed signature /S/ within this e-filed document.

3  
4 ORRY P. KORB  
County Counsel

5  
6 Dated: April 14, 2016

By: /S/  
MELISSA R. KINIYALOCTS  
Deputy County Counsel

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8 Attorneys for Defendant  
COUNTY OF SANTA CLARA

9  
10 RANKIN, STOCK & HEABERLIN

11  
12 Dated: April 14, 2016

By: /S/  
DAVID J. STOCK, ESQ.

13  
14 Attorneys for Defendant  
OFFICER PHILLIP ABECENDARIO

15  
16 McDOWALL COTTER

17 Dated: April 14, 2016

By: /S/  
DAVID S. ROSENBAUM, ESQ

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19 Attorneys for Defendant  
OFFICER TUAN LE

20  
21 LAW OFFICE OF ROBERT R. POWELL

22 Dated: April 14, 2016

By: /S/  
ROBERT R. POWELL, ESQ.

23  
24 Attorneys for Plaintiff  
RUBEN GARCIA

**ORDER**

The Court continues the Initial Case Management Conference to July 1, 2016, at  
10:30 a.m.

Dated: 4/19/2016



RONALD M. WHYTE  
Senior District Judge

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